WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED

SENATE BILL NO. 395

(By Senators Bowman, Barco, and Scott)

PASSED March 4, 1998

In Effect Ninety Days From Passage
AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to required procedure for regulation of occupations and professions.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. PROCEDURE FOR REGULATION OF OCCUPATIONS AND PROFESSIONS.

§30-1A-1. Legislative findings.
The Legislature finds that regulation should be imposed on an occupation or profession only when necessary for the protection of public health and safety. The Legislature further finds that establishing a procedure for reviewing the necessity of regulating an occupation or profession prior to enacting laws for such regulation will better enable it to evaluate the need for the regulation and to determine the least restrictive regulatory alternative consistent with public health and safety.

§30-1A-2. Required application for regulation of professional or occupational group.

(a) Any professional or occupational group or organization, any individual or any other interested party which proposes the regulation of any unregulated professional or occupational group shall submit an application for regulation to the joint standing committee on government organization no later than the first day of December of any year. The joint standing committee on government organization may only accept an application for regulation of a professional or occupational group when the party submitting an application files with the committee a statement of support for the proposed regulation which has been signed by at least ten residents or citizens of the state of West Virginia who are members of the professional or occupational group for which regulation is being sought.

(b) The completed application shall contain:

(1) A description of the occupational or professional group proposed for regulation, including a list of associations, organizations and other groups currently representing the practitioners in this state, and an estimate of the number of practitioners in each group;

(2) A definition of the problem and the reasons why regulation is deemed necessary;

(3) The reasons why certification, registration, licensure
or other type of regulation is being requested and why that regulatory alternative was chosen;

(4) A detailed statement of the fee structure conforming with the statutory requirements of financial autonomy as set out in section six-c, article one, chapter thirty of this code;

(5) A detailed statement of the location and manner in which the group plans to maintain records which are accessible to the public as set out in section twelve, article one, chapter thirty of this code;

(6) The benefit to the public that would result from the proposed regulation; and

(7) The cost of the proposed regulation.

§30-1A-3. Analysis and evaluation of application.

(a) The joint committee on government organization shall refer the completed application of the professional or occupational group to the performance evaluation and research division of the office of the legislative auditor.

(b) The performance evaluation and research division of the office of the legislative auditor shall conduct an analysis and evaluation of the application. The analysis and evaluation shall be based upon the criteria listed in subsection (c) of this section. The performance evaluation and research division of the office of the legislative auditor shall submit a report, and such supporting materials as may be required, to the joint standing committee on government organization no later than the first day of July following the date the proposal is submitted to the joint standing committee on government organization.

(c) The report shall include evaluation and analysis as to:

(1) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety
or welfare of the public, and whether the potential for the
harm is easily recognizable and not remote or dependent
upon tenuous argument;

(2) Whether the public needs, and can reasonably be
expected to benefit from, an assurance of initial and
continuing professional or occupational competence; and

(3) Whether the public can be adequately protected by
other means in a more cost-effective manner.

§30-1A-4. Public hearing and committee recommendations.

(a) After receiving the required report, the joint standing
committee on government organization may conduct
public hearings to receive testimony from the public, the
governor or his or her designee, the group, organization or
individual who submitted the proposal for regulation, and
any other interested party.

(b) The joint standing committee on government organi-
ization shall report its findings and recommendations to
the next regular session of the Legislature.

(c) The report shall include:

(1) Whether regulation of each occupation or profession
is necessary for the public health and safety and, if
regulation is necessary, recommendations as to what is the
least restrictive type of regulation consistent with the
public interest; and

(2) Whether regulation would result in the creation of a
new agency or board or could be implemented more
efficiently through an existing agency or board.

(d) The report may include a recommendation that the
occupation or profession be regulated by any of the
following mechanisms, in whole or in part:

(1) By practice standards, which may include restric-
tions established by statute;
(2) By registration, which may include inspections or other enforcement provisions;

(3) By statutory certification, which may include testing or assessment of the practitioner's credential or competency;

(4) By supervision by a licensed practitioner, which may include practice standards, registration or statutory certification;

(5) By licensure by a new or existing agency or board, which may include restrictions of the scope of practice, minimum competency, education, testing, registration, certification, inspection or enforcement.

§30-1A-5. Reapplication requirements.

If the joint standing committee on government organization approves an application for regulation of a professional or occupational group, but the legislation incorporating its recommendations does not become law in the year in which it is first introduced, the applicants for regulation may introduce legislation during each of the two successive regular sessions without having to make reapplication.

§30-1A-6. Article not to be construed as limiting new legislation.

Nothing in this article shall be construed as limiting or interfering with the right of any member of the Legislature to introduce or of the Legislature to consider any bill that would create a new state governmental department or agency or amend the law with respect to an existing one.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 13th day of March, 1998.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/14/98
Time 9:25 AM